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United States Supreme Court

OCTOBER TERM, 1948

CHARLES KOVACS,
Appellant,
against
ALFRED COOPER, JR., Judge of the First District Police Court of Trenton,
Appellee.

No. 9

APPEAL FROM THE NEW JERSEY COURT OF ERRORS AND APPEALS

BRIEF OF AMERICAN CIVIL LIBERTIES UNION, AS *AMICUS CURIAE*

AMERICAN CIVIL LIBERTIES UNION,
Amicus Curiae,
OSMOND K. FRAENKEL,
Counsel.

JAMES A. MAJOR,
EMIL OXFELD,
SAMUEL ROTHBARD,
Of the New Jersey bar,

STANLEY H. LOWELL,
Of the New York bar,
Of Counsel.

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Preliminary Statement

This brief is submitted by the American Civil Liberties Union, an organization with whose principles and ideals this Court is more than familiar.

As *amicus curiae*, we submit to this Court that the ordinance under which this appellant was convicted is unconstitutional in derogation of the First and Fourteenth Amendments to the Constitution.

Facts

The appellant was speaking with the aid of a sound amplifying device (loudspeaker) on the street in the City

of Trenton during a labor dispute. The loudspeaker was attached to a motor vehicle. The appellant was arrested, tried and convicted for violation of Trenton Ordinance No. 430 (4), entitled "An Ordinance to Prevent the Making of Unnecessary Noise." The pertinent section states as follows:

> "That it shall be unlawful for any person, firm or corporation, either as principal, agent or employee, to play, use or operate for advertising purposes, or for any other purpose whatsoever, on or about the public streets, alleys or thoroughfares in the City of Trenton, any device known as a sound truck, loud speaker or sound amplifier or any other instrument known as a calliope or any instrument of any kind or character which emits therefrom loud and raucous noises and is attached to and upon any vehicles operated or standing upon said streets or public places aforementioned."

The New Jersey courts upheld the conviction.

ARGUMENT

The ordinance under which appellant was convicted is unconstitutional.

We are here concerned with this problem: whether the absolute prohibition by a municipality of a right that this Court has held cannot be left to the unbridled discretion of a local official is not also abhorrent to the Constitution. The First Amendment provides in part:

> "Congress shall make no law respecting the establishment of religion nor prohibiting the free exercise thereof, nor abridging the freedom of speech or of the press. * * *"

These prohibitions have been extended by the Fourteenth Amendment to the action of a State or an agency thereof. *Murdock* v. *Commonwealth of Pennsylvania*, 319 U. S. 105.

The ordinance of this municipality of the State of New Jersey with which we are herein concerned completely prohibits the use of a loudspeaker upon the streets of the City, no matter what the purpose.

Two questions are, therefore, posed by the case at bar. First, whether the ordinance in issue is a proper control of the use of the streets, and second, whether the use of loud speakers is an integral part of the exercise of the right of free speech.

The argument has been made before and doubtless will be made herein that a municipality properly may foreclose the use of its streets and other public gathering places in the interest of cleanliness or traffic control. This Court has considered this position before and emphatically rejected it.

> *Young* v. *People of the State of California*, 308 U. S. 147;
>
> *Snyder* v. *City of Milwaukee*, 308 U. S. 147;
>
> *Nichols* v. *Commonwealth of Massachusetts*, 308 U. S. 147.

> "Although a municipality may enact regulations in the interest of public safety, health, welfare or convenience, these may not abridge the individual liberties secured by the Constitution to those who wish to speak, write, print or circulate information or opinion."
>
> *Schneider* v. *State of New Jersey, Town of Irvington*, 308 U. S. 147, 160.

Whatever legislation may be enacted by a municipality or State, it must not limit the constitutional liberty of one rightfully upon the street to impart information through

speech or the distribution of literature. An absolute prohibition such as in the case at bar is not justifiable.

Schneider v. *State of New Jersey, Town of Irvington, supra.*

Moreover, when a State has enacted an ordinance granting unlimited discretion to a local public official before a license could be obtained to distribute literature, religious or otherwise, or to speak or assemble, this Court has acted in firm protection of our freedom of religion, press, speech and assembly.

Cantwell v. *Connecticut,* 310 U. S. 296;
Lovell v. *City of Griffin,* 303 U. S. 444;
Hague v. *C.I.O.,* 307 U. S. 496.

Recently this view was followed and strengthened where a loudspeaker permit was available under an ordinance only by "permission obtained from the Chief of Police."

People v. *Saia,* 334 U. S. 558.

In the case at Bar the City of Trenton does not permit even the slightest breach in the wall of silence its municipal authorities have thrown around it. No discretion, however abused and arbitrary, is even permitted to a police official. The City Council has decided that no sound amplifying device can ever be used whatever the circumstances.

In *People* v. *Saia, supra,* the Court said:

> "Loud-speakers are today indispensable instruments of effective public speech. The sound truck has become an accepted method of political campaigning. *It is the way people are reached.*" (Italics added.)

This case is *a fortiori* of the *Saia* case. If loud speakers are "indispensable instruments of effective public speech" —as they are—a complete prohibition of their use, eliminating even the tiny area contained within official discretion, is that much more to be condemned. We submit with this Court that:

> "Any abuses which loud-speakers create can be controlled by narrowly drawn statutes."
>
> *People* v. *Saia, supra.*

Modern society has created for our use a further technological advance which has become an essential part of our basic right to full and complete freedom of speech. We cannot reject its use in the supposed interest of 19th Century peace and quiet. Only upon a more informed people can we build a better and more satisfying democracy.

CONCLUSION

The conviction of the appellant should be reversed and the appellant discharged.

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION,
Amicus Curiae,
OSMOND K. FRAENKEL,
Counsel.

JAMES A. MAJOR,
EMIL OXFELD,
SAMUEL ROTHBARD,
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STANLEY H. LOWELL,
Of the New York bar,

Of Counsel.